

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 413 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO  
1 & 2: Yes  
3 to 5: No

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RAJNIKANT HASMUKHLAL GOLWALA

Versus

NATRAJ THEATRE

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Appearance:

MR ARUN H MEHTA for Appellants

MR M.J. THAKORE for MR AJAY R MEHTA for Respondents

Nos. 1 to 8

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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 28/09/1999

ORAL JUDGEMENT

The appellants are some of the original defendants who have challenged the validity of the order passed below Ex. 5 dated 29th May 1999 in Special Civil Suit No. 19 of 1999 filed in the court of Civil Judge (S.D) at Navsari.

2. The relevant facts in a nutshell giving rise to the present litigation are as under:-

3. For the sake of convenience, parties to the litigation have been described as shown in the trial court. Plaintiff No. 1 is M/s. Natraj Theatre which is a partnership firm. Plaintiffs Nos. 2 to 6 and defendants Nos. 1 to 11 are partners of the said firm. It is not in dispute that plaintiffs Nos. 2 to 6 have assigned their rights as partners of the said firm to plaintiffs Nos. 7 and 8 whereas defendants Nos. 1 to 11 have assigned or sold their rights as partners of the said firm to defendant No. 12. At an earlier occasion plaintiffs Nos. 2 to 6 had agreed to sell or assign their rights to defendant No. 12 but subsequently no formal conveyance deed was executed and finally plaintiffs Nos. 2 to 6 had assigned their rights as partners to plaintiffs Nos. 7 and 8. Defendant No. 13 is an agent of defendant No. 12 who appears to be doing business on behalf of defendant No. 12 at present. Defendants Nos. 14 to 19 are officers of the State of Gujarat and the State of Gujarat, who are not concerned with this appeal.

4. Plaintiff No. 1 firm and plaintiffs Nos. 2 to 6 have filed Special Civil Suit No. 19/99 praying for a declaration that property named Natraj Theatre belongs to plaintiff No. 1 firm and plaintiffs Nos. 2 to 6 and defendants Nos. 1 to 11 are partners of the said firm and also for an injunction that defendants Nos. 1 to 13 should be restrained from entering the premises named Natraj Theatre which is a partnership property and they should not disturb possession of the partners of the said firm and should be restrained from doing business of the firm with regard to exhibition of films on behalf of plaintiff No. 1 firm etc. An application for interim injunction being application below Ex. 5 has also been filed. In the said application it has been prayed that during the pendency of the suit, by an interlocutory injunction, defendants Nos. 1 to 13 should be restrained from entering Natraj Theatre and from doing any business of the partnership firm.

5. After hearing the concerned parties, the trial court, by an order dated 29th May 1999, granted the injunction as prayed for by the plaintiffs. Being aggrieved by the said order, the present appellants who are some of the defendants who have assigned or sold their rights to defendant No. 12 have approached this Court.

6. Certain other relevant facts with regard to the history of the litigation be also taken note of at this stage. At an earlier point of time plaintiff No. 1 firm had given on lease the theatre, which is a partnership property, to M/s. Fortune Enterprise. There was some litigation between M/s. Fortune Enterprise on one hand and the partnership firm on the other. In pursuance of the said litigation, possession of the said theatre was handed over to plaintiff No. 1 firm on 16th May 1998. After some time, defendant No. 12 had taken possession of the theatre on the basis of the fact that some of the partners of the firm had sold their rights to him. Thereafter there was another litigation between plaintiffs Nos. 7 and 8 on one hand and defendant No. 12 on the other. It appears that at an earlier point of time except defendants Nos. 10 and 11, all the partners had either assigned or sold their rights or had agreed to sell their rights to defendant No. 12. Thus, defendant No. 12 was claiming rights held by plaintiffs Nos. 2 to 6 and defendants Nos. 1 to 9. He was also a power of attorney holder of some of the partners. In pursuance of the said authority or right, defendant No. 12 wanted to manage the business of the firm but it appears that he was prevented by plaintiffs Nos. 7 and 8 who were subsequently, by a deed of assignment dated 29.6.98, assigned shares of plaintiffs Nos. 2 to 6. It appears that after giving power of attorney in favour of defendant No. 12, plaintiffs Nos. 2 to 6 had revoked the same and a public notice was also given to that effect on 11.4.98. Defendants Nos. 10 and 11 were informed that people in their business circle believed that they had given power of attorney to defendant No. 12 to run business of plaintiff No. 1 firm and, therefore, to clarify the position, a public notice was given on 22nd Nov. 1997 by defendants Nos. 10 and 11 stating the fact that they had never given any power of attorney to defendant No. 12 and therefore defendant No. 12 had no right to do business on their behalf as partner of plaintiff No. 1 firm (But subsequently defendants Nos. 10 and 11 had also sold the property of the firm to defendant No. 12). Thus, plaintiffs Nos. 7 and 8 were assigned partnership rights of plaintiffs Nos. 2 to 6 whereas defendant No. 12 was having rights of defendants Nos. 1 to 11.

7. In the above circumstances, defendant No. 12 who had been assigned rights of defendants Nos. 1 to 11 on one hand and plaintiffs Nos. 7 and 8 on the other, who were assigned rights of plaintiffs Nos. 2 to 6 raised a dispute in the matter of management of Natraj Theatre.

Both were claiming the right to do the business on behalf of the partners of the firm. In these set of circumstances, respondent No. 12, who was doing his business of exhibiting films in the name of M/s. Shrirang Exhibitors Pvt. Ltd., had filed Regular Civil Suit No. 116 of 1998 in the court of 2nd Joint Civil Judge (S.D) at Navsari against plaintiffs Nos. 7 and 8 praying for a permanent injunction for restraining them from interfering with enjoyment and possession of the suit property by defendant No. 12.

8. In the said suit, an application below Ex. 5 praying for interim injunction was filed. The said application was rejected by the 2nd Joint Civil Judge (S.D), Navsari, by his order dated 25th September 1998. Being aggrieved by the said order, defendant No. 12 had preferred Civil Misc. Appeal No. 103/98 and the said appeal was allowed. Thereby, plaintiffs Nos. 7 and 8 who were defendants in the said suit were restrained from obstructing present defendant No. 12 in the conduct and management of the business.

9. Being aggrieved by the above-referred order passed in Civil Misc. Appeal No. 103/98, present defendants Nos. 7 and 8 had filed Civil Revision Application No. 92 of 1999 in this Court which was dismissed by this court (Coram: N.N. Mathur, J.) on 11th February 1999. By virtue of the said decision, this court, in the said litigation, held that present defendant No. 12 had a right to do business in the premises of Natraj Theatre. Much reliance is placed upon this judgment by defendant No. 12 and therefore it is appropriate to make a reference to the said litigation. It is to be noted that the said litigation was between present defendant No. 12 who was assigned rights of defendants Nos. 1 to 11 and plaintiffs Nos. 7 and 8 who were assigned rights of plaintiffs Nos. 2 to 6. It is pertinent to note that in the said litigation no partner of plaintiff No. 1 firm was a party. In the instant case, the plaintiffs who are partners of plaintiff No. 1 firm have prayed that they should not be hindered or restrained from doing business of the partnership firm by defendants Nos. 1 to 13. Defendants Nos. 1 to 11 are partners of plaintiff No. 1 firm and as stated above defendant No. 12 is an assignee of defendants Nos. 1 to 11. As stated hereinabove, defendant No. 13 is an agent or manager who is doing business on behalf of defendant No. 12 and therefore defendant No. 13 is not having any right of his own but he only acts as an agent of defendant No. 12 who claims his rights through defendants Nos. 1 to 11. It is an admitted fact that no

suit for dissolution of the firm has been filed by any of the partners.

10. After hearing the concerned parties and upon perusal of the judgment delivered in Civil Revision Application No. 92/99 referred to hereinabove, the trial court had granted interlocutory injunction as prayed for in Special Civil Suit No. 19 of 1999. By virtue of the said order, defendants Nos. 1 to 13 have been restrained from interfering with the peaceful possession of the plaintiffs with regard to Natraj Theatre and they have also been restrained from interfering with doing business of exhibiting films by the plaintiffs in the premises belonging to plaintiff No. 1 firm.

11. In the background referred to hereinabove, let me revert to the present appeal.

12. Ld. Advocate Shri A.H. Mehta appearing for defendants Nos. 2, 3, 5, 6, 7, 8, 9, 12 and 13 has challenged the validity of the impugned order on several grounds. He has mainly argued that the court below did not consider the fact that in another litigation being Civil Revision Application No. 92/99, this court had restrained plaintiffs Nos. 7 and 8 from interfering with the possession of defendant No. 12 who was in fact doing business in the name of M/s. Shrirang Exhibitors Pvt. Ltd. in Natraj Theatre. It has been further submitted that even in the said litigation a detailed order was passed by the learned Assistant Judge, Valsad at Navsari, in Civil Misc. Appeal No. 103/98 wherein present plaintiffs Nos. 7 and 8 and defendant No. 12 were parties. Certain findings which were arrived at by the said appellate court and by this court in the C.R.A. and observation made by this court in A.O. No. 228/99 decided on 22.4.99 were altogether ignored by the trial court while deciding the application below Ex. 5. He has further submitted that defendant No. 12 has been given rights of some partners of plaintiff No. 1 firm and therefore defendant No. 12 or his agent i.e. defendant No. 13 has a right to do business on behalf of the firm. He has submitted that when rights of the said partners have been assigned or sold to defendant No. 12, one can very well presume that substantial consideration must have been passed to the said partners of the firm from defendant No. 12 and in the circumstances if defendant No. 12 is prevented from doing the business, it would be absolutely unjust and that would invariably put defendant No. 12 to substantial financial loss. It has also been submitted by him that as found by this court in C.R.A. No. 92/99, defendant No. 12 is very

much in possession of the suit premises and he is doing the business as an assignee of all the partners and therefore there was no reason for the trial court to restrain defendant No. 12 from doing the business of the partnership firm. He has further submitted that the firm has not been duly registered and therefore the suit is not maintainable as per the provisions of sec. 69(1) and (2) of the Partnership Act, 1932 (hereinafter referred to as 'the Act').

13. He has further submitted that while granting an injunction, the court has to see whether balance of convenience is in favour of a person praying for such an injunction. Moreover, it is also the duty of the court to see that status-quo as on the date on which the suit is filed is maintained during the trial and therefore normally an injunction should be granted or refused in such a manner that the position which is prevailing on the date on which the suit is filed is maintained during the trial. In the circumstances, he has submitted that defendant No. 12 who was doing the business at the time of filing of the suit, should have been permitted to do the business during the pendency of the trial.

14. According to learned advocate Shri Mehta, the court has also to see prima facie case and has also to consider whether irreparable injury would be caused to the party against whom injunction is granted. In the instant case, defendant No. 12 is managing the business of the firm and in view of the fact that he has purchased rights of some of the partners, he has a right to do the business on behalf of those partners of the firm.

15. For the above-referred reasons, Ld. Advocate Shri A.H. Mehta has submitted that the order passed by the trial court is illegal and unjust and therefore this court should quash and set aside the said order.

16. On the other hand, Sr. Advocate Shri M.J. Thakore appearing for learned advocate Shri A.R. Mehta has submitted that the order passed by the trial court is just, legal and proper. He has submitted that the suit is maintainable looking to the provisions of sec. 69(1) and (2) of the Act because the firm has been duly registered and plaintiffs Nos. 2 to 6 are partners of the said firm and their names appear in the register maintained by the Registrar of Firms. It has been further submitted by Shri Thakore that it was not necessary for the trial court to consider or give any weightage to the findings arrived at in Civil Misc. Appeal No. 103/98 and C.R.A. No. 92/99 for the reason

that the parties to the litigation in the said proceedings and the parties in these proceedings are absolutely different. He has further submitted that plaintiffs Nos. 2 to 6 are partners of the firm and they cannot be prevented from doing the business. He has submitted that as per the provisions of sec. 12 of the Act every partner has a right to take part in the conduct of the business unless there is any contract to the contrary. He has submitted that in the instant case, there is no contract contrary to the said provision and therefore plaintiffs Nos. 2 to 6, being partners of plaintiff No. 1 firm, cannot be restrained from doing the business. Moreover, he has submitted that it is never permissible to a partner of the firm to deal with partnership property as his own property. He has drawn my attention to the provisions of secs. 14 and 15 of the Act to show that the property of the firm is to be used by the partners exclusively for the purpose of the business. He has further submitted that as per the provisions of sec. 19 of the Act, no partner has any implied authority to transfer any immovable property belonging to the firm. He has thereafter submitted that in the instant case defendants Nos. 1 to 11 who are partners of plaintiff No. 1 firm have tried to dispose of the property of the firm as if the property belonged to the partners individually and the said action on the part of the said defendants is absolutely illegal. He has submitted that defendants Nos. 1 to 11 have sold the partnership property to defendant No. 12 and as the said sale or transfer is illegal, defendant No. 12 cannot get any right in the partnership property. It has been submitted by him that as the property of the firm could not have been transferred by the partners as their own properties, defendant No. 12 or defendant No. 13, claiming through defendant No. 12, would not get any right in immovable property of the partnership firm and thereby they would also not get any right to do the business. Moreover, he has also referred to the provisions of sec. 29 of the Act which deals with the rights of an assignee of a partner. He has submitted that according to the provisions of sec. 29, till the firm is dissolved, a transferee of the partner's interest would have a right to receive a share of profits of the transferring partner and therefore defendant No. 12 will have a right to get share of profits which defendants Nos. 1 to 11 are entitled to. It has also been submitted that as a transferee, defendant No. 12 cannot have any right in the assets of the firm unless the firm is dissolved.

17. It has been fairly submitted by Shri Thakore that

as plaintiffs Nos. 7 and 8 are assignees, who have been assigned rights of plaintiffs Nos. 2 to 6, plaintiffs Nos. 2 to 6 would not permit plaintiffs Nos. 7 and 8 to enter the premises of Natraj Theatre for doing the business on their behalf. Moreover, as a counsel appearing for plaintiffs Nos. 7 and 8, he has stated that plaintiffs Nos. 7 and 8 shall not enter the property of the firm for doing the business of the firm and they shall not interfere in the conduct or management of the business of the partnership firm. Thus, he has submitted that at present the right to do business would be exercised only by plaintiffs Nos. 2 to 6 on behalf of the firm. He has thereafter very fairly stated that defendants Nos. 1 to 11, who are the partners of the firm, cannot be prevented from doing the business and therefore though they have assigned their rights and interests in the firm to defendant No. 12, defendants Nos. 1 to 11 cannot be prevented from doing the business and if defendants Nos. 1 to 11 are ready and willing to do the business of the firm, plaintiffs Nos. 2 to 6 would warmly welcome them so that business of the firm can be done in the interest of all the partners.

18. He has further submitted that by an agreement dated 7.10.97 plaintiffs Nos. 2 to 6 had agreed to sell their interest in the property of the firm to defendant No. 12. The said agreement was a conditional one and as the conditions incorporated in the said agreement had not been fulfilled, the final conveyance deed was never executed and therefore as per the provisions of sec. 54 of the T.P. Act, such an agreement would not create any interest or charge on the property which was subject-matter of the said agreement in favour of defendant No. 12. Thus, he has submitted that defendant No. 12 has not been given any right in respect of the property of the firm by plaintiffs Nos. 2 to 6.

19. Senior advocate Shri Thakore appearing for the plaintiffs has also submitted that from the period from which defendant No. 12 has taken over the business of the firm, the firm has started incurring losses. So as to support his version, he has placed on record certain material which has already been placed before the trial court. Ld. Advocate Shri A.H. Mehta appearing for some of the defendants has submitted that the said material cannot be looked into by the court. In reply to the said submission, Senior advocate Shri Thakore has submitted that by virtue of an interim order, it was directed that accounts of the firm should be submitted to the trial court by defendant No. 12 regularly and he is relying upon such accounts which have been presented before the

trial court by defendant No. 12 and which is forming part of the record of the trial court. Upon perusal of the said accounts, it appears that the business is running into losses. Sr. Advocate Shri Thakore has submitted that as the partnership business is running into losses, the partners of the firm shall always remain liable to the third parties if some liability is incurred by the firm to the third parties. Looking to the nature of liability of the partners towards third parties, plaintiffs Nos. 2 to 6 might be called upon to pay the dues of the firm. He has therefore submitted that in such a set of circumstances, defendant No. 12 cannot be permitted to do the business of the firm.

20. After hearing the learned advocates and upon perusal of the relevant documents, it appears that the following legal issues have arisen in this appeal from order. The first and the foremost issue is with regard to the right of an assignee or a transferee of a partner's interest. If an assignee or a transferee of a partner's interest has no right to do the business or to participate in the management of business, defendant No. 12, who is an assignee of the right and interest of defendants Nos. 1 to 11 shall not have any right to enter Natraj Theatre for the purpose of doing the business of the firm. If defendant No. 12 has no right to do the business as an assignee of some of the partners of the firm, defendant No. 13, who is an agent of defendant No. 12, cannot have any right to do the business on behalf of defendant No. 12. Section 29 of the Act is the relevant section which deals with the rights of a transferee of a partner's interest. It reads as under:

"29. Rights of transferee of a partner's interest.- (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining

that share, to an account as from the date of the dissolution."

On a bare perusal of the said section it is crystal clear that a transferee of a partner's interest in the firm cannot have a right to interfere in the conduct of the business but he can have a limited right to receive the share of profits of the transferring partner during the continuance of the firm. Thus, sec.29 makes it abundantly clear that the rights of the transferee are on a distinctly lower plane than those of his transferor. The transferee is not entitled to participate in the business but he has to content himself by receiving the share of profits which might be calculated on the basis of accounts agreed upon by the existing partners, which he is bound to accept. Looking to the provisions of sec. 29 of the Act, he cannot even question the correctness of the amount offered to him. Even if the other partners of the firm are managing the business in a hopelessly bad manner, the transferee cannot do anything. He cannot even move for dissolution if the properties of the firm are being wasted or the business is running into losses. Up to the time of dissolution of the firm, his right is limited - right to get profits which the transferor partner is entitled to. The transferee would get some right in the assets of the firm only in the event of dissolution of the firm and in that event he becomes entitled as against the remaining partners to receive the share of partnership property to which his transferor was entitled to and only in that event he is entitled to ask for an account - but that too from the date of the dissolution. It is pertinent to note here that such a right to get share in the properties of the firm or to have an account will commence only from the date on which the firm is dissolved. Admittedly, in the instant case, the firm has not been dissolved yet. Thus, looking to the provisions of sec. 29 of the Act, the transferee cannot acquire any interest in the partnership property till the firm is dissolved and as stated hereinabove, he cannot have any right to interfere in the management of the business.

21. The logic behind this section is very clear. A partnership is founded upon trust and confidence which the partners of the firm have in each other. One of the important elements of the partnership is the principle of agency. A person would never make another person his agent unless he has full faith in the person. Only for this reason, without consent of all the partners, an outsider cannot be admitted to partnership. The reason is very simple. The moment a person becomes a partner,

22. In view of the above discussion, it is very clear that an assignee or a transferee of a partners interest can never have a right to do business of the partnership firm.

19. Implied authority of the partner as agent of the firm.-

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

The said section clearly provides that in absence of any usage or custom of trade to the contrary, the implied authority of a partner would not empower him to transfer immovable property belonging to the firm. In the instant case, defendants Nos. 1 to 11 have not only assigned their interest in the partnership firm to defendant No. 12, but they have also sold immovable property of the firm to defendant No. 12. A partner has a right to do business and in the course of business he can deal with the property of the firm. But this right would not enable him to deal with partnership property as his own property. Moreover, in any case he has no right to deal with any of the immovable properties of the partnership firm. Here, looking to the facts of the case, it is

clear that defendants Nos. 1 to 11 have made an effort not only to transfer their interest in the firm to defendant No. 12 but they have tried to sell the entire property which belongs to the partnership firm. My attention has been drawn to the documents at Mark 3/32 to 3/42 whereby it appears that defendants Nos. 1 to 11 have sold property wherein Natraj Theatre is situated. The said documents have been placed on record by the plaintiffs. They have submitted that they were unable to procure the sale deeds as the sale deeds were executed by defendants Nos. 1 to 11 in favour of defendant No. 12 and therefore they were not in a position to have copies of the sale deeds but on the basis of the information received from the extract of relevant register of the office of the Sub-Registrar, they could show to the court that the entire immovable property of the firm was sold by defendants Nos. 1 to 11 in favour of defendant No. 12.

24. Looking to the legal position incorporated in sec. 19 of the Act, it is very clear that defendants Nos. 1 to 11 who are partners of plaintiff No. 1 firm could not have sold the property of the firm to defendant No. 12 in pursuance of the implied authority. Normally, only with consent of all the partners, immovable property of the firm can be sold. In the instant case, some of the partners, without consent of the other partners, have disposed of immovable property of the firm in favour of defendant No. 12. The said transaction is definitely hit by the provisions of sec. 19 of the Act. In the circumstances, it is very clear that defendants Nos. 1 to 11 could not have sold the property of the firm to defendant No. 12.

Section 15 of the Act reads as under:-

"15. Application of the property of the firm.-  
Subject to contract between the partners, the  
property of the firm shall be held and used by  
the partners exclusively for the purposes of the  
business."

Thus, section 15 of the Act declares that subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of partnership business. This legal position precludes the possibility of any property of the firm being shown as separate property of any partner so long as the partnership subsists.

25. Looking to the provisions of the Act, it is very

clear that no partner can sell any part of the assets of the partnership firm as belonging to him and this being the position, no partner can ever validly sell or dispose of any of the partnership property as his own property. Partnership property vests in the firm and it does not vest in any of the partners and therefore it would not be possible for any partner to pinpoint any portion of the partnership property as his own property.

26. A partner cannot deal with any portion of the partnership property as his own property for the reason that he is not like a co-owner of the property. A co-owner, without the consent of the other co-owners, can transfer his interest to a third party and in that event, the third party shall have the same rights which the transferor had and the transferor shall be put in the same position as regards the other co-owners as the transferor himself was before the transfer. By virtue of the provisions of sec. 29 of the Act, position of a transferee of a partners interest would not be the same as a transferee of a co-owner's interest. Thus, there being a difference in the partnership and co-ownership, defendant No. 12 shall not have any right which his transferee partners had in the partnership property.

27. One of the prayers of plaintiffs Nos. 2 to 6 is that they should be permitted to do business of the partnership firm. Section 12 of the Act reads as under:-

"12. The conduct of the business.- Subject to contract between the partners-  
(a) every partner has a right to take part in the conduct of the business";

Section 12 of the Act thus gives a right to every partner to take part in the conduct of the business. Of course, the right which is enshrined in the Act takes effect subject to any express or implied contract amongst the partners. The question would be whether such a contractual right which has arisen from the relation of partnership be fettered by any court. In the instant case, it is not the case of any of the parties that plaintiffs Nos. 2 to 6 have no right to do business. In view of this fact, no partner of plaintiff No. 1 firm can be prevented from doing partnership business. Moreover, it would not be even proper or legal on the part of any court to restrain any partner from doing business unless a case has been made out against that partner that he is trying to do business though, by a contract, he has been restrained from doing the business.

That is not the case here.

28. Thus, looking to the fact that a partner has a right to do business which cannot be fettered by any court unless there is a contract to the contrary arrived at amongst themselves, plaintiffs Nos. 2 to 6 cannot be prevented from doing business of the firm.

29. Ld. Advocate Shri Mehta has put great stress on the findings arrived at in Civil Revision Application No. 92/99. He has submitted that in a litigation which was between plaintiffs Nos. 7 and 8 on one hand and defendant No. 12 on the other, a competent court has come to a conclusion that defendant No.12 has a right to do the business and in fact he was doing business at the relevant time. Even at present it is not in dispute that defendant No. 12 is doing the business of the firm. So far as litigation between the strangers is concerned, I do not think that the findings arrived at by the trial court or by the lower appellate court or by this court can be of any help to defendant No. 12. The reason is very simple. That was a fight between two sets of assignees or transferees of the interest of the partners. Defendant No. 12 had got his right from defendants Nos. 1 to 11 whereas plaintiffs Nos. 7 and 8 had got their rights from plaintiffs Nos. 2 to 6. In the litigation which has been referred to hereinabove and on which learned advocate Shri Mehta wants to rely upon, neither the firm nor the partners were parties. That was a fight between two sets of assignees. Among those two sets of persons, the trial court as well as this court decided that defendant No. 12 had a better right and in that litigation defendant No.12 was permitted to do the business. Now, in the arena, the partners or those who have right to do the business have entered. The picture would be absolutely different in view of their presence in the litigation. As stated hereinabove, the partners are the only persons who have a right to do the business of the plaintiff firm and their transferees have no right to do the business in view of sec. 29 of the Act. Still the firm has not been dissolved. In the circumstances, defendant No. 12 or plaintiffs Nos. 7 and 8 cannot have a right to do the business of the firm.

30. Ld. Advocate Shri Mehta has submitted that the suit is not maintainable as per the provisions of sec. 69 of the Act for the reason that the partners of the firm on the date on which the suit was filed and the partners of the firm as seen in the Register of Firms are different. He has relied upon a judgment delivered by the Hon'ble Supreme Court in the case of M/s. Shreeram

Finance Corporation v. Yasin Khan and others, AIR 1989 SC 1769. It has been submitted by him that in view of the law laid down by the apex court in the said judgement, the suit is not maintainable. It has been submitted by ld. advocate Shri Thakore that as a matter of fact plaintiffs Nos. 2 to 6 who have filed the suit are the partners whose names appear in the register maintained by the Registrar of Firms. He has relied upon Mark 3/6 which clearly reveals that names of plaintiffs Nos. 2 to 6 are shown in the register. Sec. 69 of the Act reads as under:

"69. Effect of non-registration.- (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suits to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm."

In the case which has been referred to by learned advocate Shri Mehta it has been observed by the Hon'ble Supreme Court that names of some persons, who were partners of the firm as on the date on which the suit was filed, were not shown in the Register of Firms and the partners whose names were not in the Register had filed the suit. The facts are different in the instant case. In the instant case, all the partners who are suing have been shown in the Register of Firms. According to Sec. 69(1) of the Act, the suit is not maintainable unless the firm is registered and the person suing is or has been shown in the Register of Firms as partner in the firm. It is not in dispute that the firm has been duly registered. Of course, there was some change in the partnership and some partners who were initially partners in the firm were not partners at the time when the suit was filed. But the fact remains that names of all the partners who have filed the suit are very much shown in the Register of Firms. Looking to the said fact, I do not think that by virtue of the judgment referred to by ld. advocate Shri Mehta, the suit can be said to be not maintainable. Ld. advocate Shri Thakore has relied upon

judgments delivered in Pratapchand Ramchand & Co. v. Jehangirji Bomanji Chinoy, AIR 1940 Bombay 257, M/s. Durga Das Janak Raj v. M/s. Preete Shah Sant Ram, AIR 1959 Punjab 530, and Firm Paras Ram Ram Sarup and others v. Firm Baldev Sahai Ram Bhagat and others, AIR 1963 Punjab 215. It has been submitted by him that in all the three cases referred to above, after death of one of the partners, though necessary change was not effected in the Register of Firms, the firms were treated as registered firms and suits filed by the firm or by the partners whose names were on the Register of Firms were held to be maintainable.

31. In case of Sharad Vasant Kotak & Ors. v. Ramniklal Chawda & Anr. (1998) 2 SCC 171 the Hon'ble Supreme Court has taken a view that when a partnership firm was initially registered, even though after induction of a new partner it was not registered again, the suit filed by a partner of the firm whose name appeared in the Register of Firms was maintainable. In the cases cited by Sr. Advocate Shri Thakore also it was held that if names of the partners filing the suit are on the Register of Firms, the suit is maintainable. Thus, the law laid down in the case of Shri Sharad Vasant Kotak and others (supra) by the Hon'ble Supreme Court is in favour of the plaintiffs.

32. In the circumstances, it is clear that the suit is maintainable and therefore the contention of learned advocate Shri Mehta that the suit is not maintainable cannot be entertained.

33. Another point which learned advocate Shri Mehta has urged is with regard to irreparable injury which would be caused to defendant No. 12 if he is not permitted to do the business. I do not agree with him. If an outsider, who is only a transferee of the interest of the partners, who has no right to do the business, is permitted to do the business and as a result thereof, if loss is caused to the firm and, in fact, as suggested hereinabove, the firm is running into losses at present, irreparable injury would be caused to the plaintiffs and other partners and not to defendant No. 12. Moreover, as stated hereinabove, the legal position is very clear that the outsider has no right to do the business or interfere in the business and therefore if defendant No. 12 is prevented from doing business during the trial, no harm of whatsoever type, would be caused to defendant No. 12. The submission of learned advocate Shri Mehta that substantial amount has passed by way of consideration to defendants Nos. 1 to 11 from defendant No. 12 is

irrelevant for the reason that if defendants Nos. 1 to 11 have acted against legal provisions while selling immovable properties of the firm, if they have received any consideration, they are bound to return the same to defendant No. 12.

34. Submission of learned advocate Shri Mehta with regard to not following the course suggested by this court in A.O. No. 228/99 decided on 22.4.99 is also not sustainable for the reason that the said directions were to operate till Ex. 5 is finally decided. Now, especially when application below Ex. 5 has been finally decided, the observations made and directions given in the said A.O. cease to operate and therefore the observation made by the trial court in its operative portion with regard to operation of the order passed in the said A.O. shall not operate. In my opinion, the said submission is therefore not relevant and it cannot be said that the trial court has made an error by not following the observations made by this court which were meant only for the period during which Ex. 5 was not decided.

35. Ld. Advocate Shri A.H. Mehta has made some effort to show that certain findings given by the trial court are contrary to the findings arrived at in proceedings in Regular Civil Suit No. 116/98. As stated hereinabove, parties in both the suits are different. Moreover, new material has also been placed on the record of this case and therefore in my opinion it was not necessary for the trial court to adhere to the findings which were given at an interlocutory stage in Regular Civil Suit No. 116/98. Needless to say that at the time when an application below Ex. 5 is decided, the observations made and the findings given at that stage are only tentative. The suit is to be decided only after considering the entire evidence which is to be adduced during the course of the trial.

36. Ld. Advocate Shri A.H. Mehta has submitted that the trial court has given different treatment to plaintiffs Nos. 7 and 8 who are assignees of interest of plaintiffs Nos. 2 to 6. It has been submitted by him that rights of plaintiffs Nos. 7 & 8 can never be more than what defendant No. 12 can have. He has impliedly suggested that better treatment has been given to plaintiffs Nos. 7 and 8. In my opinion, the said submission is not true. Even if some averments have been made with regard to plaintiffs Nos. 7 and 8 and about their right, it has been clarified by Sr. Advocate Shri Thakore that plaintiffs Nos. 7 and 8 shall not be

permitted to do any business of the firm. In view of the said statement made, I do not think that plaintiffs Nos. 7 and 8 would get any right which would be better than the right which has been given to defendant No. 12.

37. Now remains the question with regard to interlocutory injunction. Normally, before granting interlocutory injunction, the court would consider whether the case of the plaintiff is so clear and free from objection on equitable grounds also that it should interfere at the initial stage without waiting for the final outcome of the suit. Several factors are to be considered by the court while granting interlocutory injunction. Normally the court would like to see whether property which is subject matter of the suit is likely to be wasted during the pendency of the suit, whether the balance of convenience is in favour of the plaintiff, whether damage, if any, which might be caused to the plaintiff can be compensated in terms of money, etc. After having an overall view of the facts of the case, the court has to decide whether interlocutory injunction should be granted in a particular case.

38. Looking to the facts of the case, the court has to see what would be in the larger interest of the plaintiff firm and its partners. It is true that at present defendant No. 12 is in possession of the suit property, i.e., Natraj Theatre, and he is doing the business through defendant No. 13 who is his agent. Now the question is, would it be just and proper on the part of any court to permit something which is patently improper or illegal? As stated hereinabove, defendant No. 12 cannot have any right in the immovable property of the firm because partners of plaintiff No. 1 firm could not have sold immovable property of the firm as their own property to defendant No. 12. Moreover, as stated hereinabove, a transferee of the partners interest gets only a right to get a share of the profits which the transferring partner has in the firm. The transferee has to be satisfied with a share of profits calculated on the basis of the accounts agreed to by the existing partners. He cannot question even the accounts. He can question the accounts or he can ask for assets only after dissolution of the firm. Admittedly, the firm has not been dissolved. If a person doing the business of the firm without any right to do the same on behalf of the partners, is permitted to do the business, it would perpetuate illegality. Moreover, there are all chances that the loss caused to the firm on account of management of defendant No. 12 might have to be borne by the partners of the firm. Such a situation cannot be

continued. Moreover, if defendant No. 12 is permitted to do the business, he would be acting in violation of the provisions of sec. 29 of the Act and in my opinion it would not be proper to permit a person to do something under an order of the court, which he is not legally entitled to do.

39. For the reasons referred to hereinabove, in my opinion, the balance of convenience would be in favour of the partners of the firm and not in favour of defendant No. 12 who is an outsider. The trial court has therefore rightly considered the above referred aspects and has permitted plaintiffs Nos. 2 to 6 to do the business of the firm. Senior Advocate Shri Thakore has already stated that plaintiffs Nos. 7 and 8 shall not do the business and defendants Nos. 1 to 11 shall not be prevented from doing the business of the firm. In the circumstances, it would be open to defendants Nos. 1 to 11 to participate in the management of the business. By virtue of the above understanding, there would not be any violation of any right of any of the partners of the firm.

40. In view of the statement made by learned Sr. Advocate Shri Thakore it is directed that plaintiffs Nos. 7 and 8 shall not interfere in the business of the firm and it would be open to defendants Nos. 1 to 11 to participate in the management of the business of the firm. I do not find any illegality in the impugned order dated 29.5.99 passed below Ex. 5 and therefore subject to the above direction, the appeal from order is rejected with no order as to costs.

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